IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

CWP No.7907-CAT of 2002

Date of Decision: 29.11.2006

Dalip Kumar .....Petitioner

Versus

Union of India and others .....Respondents

**CORAM:- HON'BLE MR.JUSTICE J. S. KHEHAR**
**HON'BLE MR.JUSTICE S. D. ANAND**

Present: Mr.BK Bagri, Advocate
for the petitioner.

Mrs.Abha Rathore, Advocate for the respondents.

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**S. D. ANAND, J.**

The petitioner is a railway employee. He is posted as M/W Fitter in Railway Workshop Jagadhari. Railway Quarter No.41-B, Railway Colony / JUDW was allotted to him. He was indicted in a domestic enquiry on a finding that he had sublet the Government accommodation aforesaid. A penalty of reduction to the lower grade of Tech-II (Fitter) in the scale of Rs.4000-6000 was imposed upon him for a period of one year. The higher grade of Tech-I (Fitter) of Rs.4500-7000 was to be restored after one year. In addition thereto, the recovery of penal rent was also ordered. The Appellate Authority reduced the punishment to penalty of reduction in the

time scale for two years with cumulative effect. A revision petition preferred by him before the Competent Authority failed. The petitioner, thereafter, filed O.A. No.993/HR/2001 before the Central Administrative Tribunal, Chandigarh Bench, Chandigarh (hereinafter referred to as "the Tribunal"). The O.A. aforesaid was dismissed by the Tribunal vide order dated 10.1.2002. The petitioner, thereupon, approached this Court by filing a Civil Writ Petition, thereby applying for the invalidation of the impugned order passed by the Tribunal.

We have heard Mr.BK Bagri, learned counsel for the petitioner and Mrs.Abha Rathore, learned counsel for the respondents.

The grievance, vehemently urged by the learned counsel for the petitioner, is that the domestic enquiry findings were based upon unacceptable evidence inasmuch as the lady alleged to have been found residing in the premises aforesaid at the time of vigilance raid was not examined and the Enquiry Officer did not attach deserved importance to the fact that the petitioner holds a Permanent Account Number (PAN) issued by the Income Tax Authorities at that very address. Apart therefrom, it was argued that the Tribunal did not appropriately take into consideration the statements of two neighbourers examined by the petitioner in the domestic enquiry.

As noticed by the Tribunal in the impugned order itself, the domestic enquiry (which ultimately indicted the petitioner) has been found to have been conducted in conformity with the principles of natural justice after giving the applicant a reasonable and fair opportunity to defend himself. The further relevant finding recorded by the Tribunal is extracted hereunder:

> "There is no case for the applicant that he was not given a reasonable opportunity to defend himself. Going through the enquiry report (Annexure A/1), we find that the enquiry has been conducted in conformity with the principles of natural justice after giving the applicant a reasonable and fair opportunity to defend himself. The only point argued by the applicant is that the impugned order is not supported by proper evidence that the evidence which appears in favour of the applicant has not been considered by the disciplinary authority. The Vigilance squad during its checking had found that the applicant had sublet his Govt. quarter No.41-B to one Shri Narain Dutt whose wife Smt.Yashodha with two children was found at the time of its inspection. She had stated to the Vigilance squad that she along with her husband and two children were staying as tenants. However, the Vigilance squad had not recorded the statement of the lady as one of her small children was crying at the time of visit. However, the charge of misconduct of subletting official accommodation allotted to the applicant is found proved by the Enquiry Officer."

In the normal course of things, the petitioner would have had a ration card of self and members of his family at the above address. He would also have been enrolled as a voter at that address. Neither a ration card nor a copy of the voter list was produced by the petitioner in the domestic enquiry to buttress his plea that he was in occupation of the Government accommodation aforesaid. The mere fact of recording of this address in the PAN is neither here nor there. The PAN would, obviously,

contain that very address which would have been indicated by the petitioner in the relevant application filed before the Income Tax Authorities for the issuance thereof. The non-production of the lady aforementioned is also insignificant. There is a precise finding that, besides the lady aforementioned, there were two children of hers found on the premises and further that the statement of the lady could not be recorded by the Vigilance Squad as one of her children was crying at the time of the visit by the Vigilance Squad. If the Vigilance Squad had not actually visited the premises, there was no way the Squad would have been able to obtain that information. It needs to be noticed here that there is no allegation by the petitioner that the Enquiry Officer, the Disciplinary Authority and the Revisional Authority had any bias against him.

Yet another plea urged on behalf of the petitioner was that the present is a case of double jeopardy inasmuch as the petitioner has been burdened with a penal rent and also a penalty of reduction in scale.

The plea is devoid of merit. The recovery of penal rent and the other penalty are not of the type which would attract the allegation of double jeopardy. The imposition of penalty of reduction of scale was imposed upon the petitioner on account of the dereliction for which he was indicted in the domestic enquiry; while the recovery of penal rent is to compensate the Government in the context and to thereby compel the petitioner to part with the unearned financial benefit which he obtained by the proved subletting of the Government accommodation.

The allotment of Government accommodation, is obviously, on a concessional rate and misuse thereof, by subletting or otherwise, must deserve the frown of law. Such a conduct, which is aimed at obtaining a

pecuniary benefit by illegal means, is reflective of the integrity of the public servant. In the light thereof, it also cannot be validly argued that the penalty imposed is harsh in any manner at all.

It may be noticed that the respondents made the following precise averment in the written statement:

> "On establishment of charge of subletting, the allotment of Government accommodation was cancelled by the Competent Authority, which (Competent Authority) also ordered the recovery of penal rent. The petitioner filed two O.As. O.A. No.993/HR/2001 was filed against the validity of the domestic enquiry proceedings; while O.A. No.1036/HR/2001 dated 10.3.2001 was filed against the cancellation of the allotment, recovery of rent and eviction etc. Both the O.As. were dismissed by the Tribunal. The present Writ Petition is only qua the dismissal of O.A. No.993/HR/2001 on 10.1.2002 by the Tribunal; while the order passed by the Tribunal dismissing O.A. No.1036/HR/2001 has not been challenged by the petitioner."

That averment in the preliminary submissions has not been denied in the corresponding para of the replication.

We are, thus, of the opinion that the impugned order passed by the Tribunal does not call for any interference. There is no averment of bias against any one in the context. It is not a case of want of evidence. In fact, the Enquiry Officer indicted the petitioner on the basis of adequate and acceptable evidence. The Disciplinary Authority recorded a well reasoned order. The Appellate Authority and the Revisional Authority also acted in a

fair manner. The Writ Petition is bereft of merit and is dismissed.

( S. D. ANAND )
JUDGE

( J. S. KHEHAR )
JUDGE

November 29, 2006
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